would seem fairly to imply a further power in the insured to alienate this interest of his. See *Travelers' Ins. Co. v. Healy, supra.* This is analogous to the doctrine that the beneficiary may—in the absence of express provision to the contrary—assign whatever interest he has in a policy. See *Hewlett v. Home for Incurables* (1891) 74 Md. 350, 24 Atl. 324; *Connecticut Mutual Life Ins. Co. v. Baldwin* (1885) 15 R. I. 106, 23 Atl. 105; and *cf.* in this connection (1915) 24 YALE LAW JOURNAL, 433. What difficulty there is in this branch of the principal case appears to arise in giving preference to either of what the dissent regards as two inconsistent tendencies in a poorly drawn policy: the insured may not change his beneficiary or revoke the insurance; yet the "insured or owner" may borrow to the limit of its value.

Equity will refuse specific performance of an agreement to borrow money. *Rogers v. Challis* (1859, Rolls Ct.) 27 Beav. 175. In such a case the damages at law are clearly adequate. The same rule has been applied to a contract to loan. *Sichel v. Mosenthal* (1862, Rolls Ct.) 30 Beav. 371; *Conklin v. People's Bldg. & Loan Assn.* (1886, Ch.) 41 N. J. Eq. 20, 2 Atl. 615. So far as this is based on the theory of mutuality, it would appear to be without sound foundation. See COMMENTS (1917) 27 YALE LAW JOURNAL, 261. So far as the desired loan can be procured elsewhere, at, perhaps, a higher rate of interest, there is no call for equity to interfere. Where the loan cannot be procured elsewhere, and the defendant knew of the special purpose to which the money was to be applied, special damages are recoverable. See (1918) 18 COL. L. REV. 170. But even special damages must often be conceded inadequate. It has been said that there is hardship in forcing a loan from a man, to one whose credit is not such that he can borrow elsewhere. See (1918) 18 COL. L. REV. 491; see also *Conklin v. People's Bldg. & Loan Assn., supra.* But where the contract is fairly made, one who repents of his bargain should not be allowed by crying hardship to escape performance and inflict greater hardship on the other party. In the principal case even the argument of hardship does not apply. The insurer does not suffer, since the amount of the loan is limited to the value of its own policy. And as such a policy would probably not be acceptable security for borrowing elsewhere, the case seems clear for the decree of specific performance.

LIMITATION OF ACTIONS—AMENDMENTS—CHANGING FROM EQUITABLE TO LEGAL REMEDY AFTER STATUTE HAS RUN.—The plaintiff filed a bill in equity in the federal District Court for the District of Nebraska, seeking on account of the defendants' fraud the cancellation of a deed given in an exchange of lands. The master in chancery reported that the plaintiff had lost his right to equitable relief because, after learning of the fraud, he had cut timber on the land received from the defendants; the case was transferred to the law side of the court, and the plaintiff amended his complaint and asked for a judgment for damages for deceit. To the amended complaint the defendant pleaded the Nebraska statute of limitations. *Held,* that filing the original complaint for equitable relief prevented the statute of limitations from continuing to run as against the claim for relief at law set up by the amendment. *Friederichsen v. Renard* (1918, U. S.) 38 Sup. Ct. 450.

See COMMENTS, p. 1053.

MONOPOLIES—SHERMAN ACT—COMBINATION OF NON-COMPETING PRODUCTS—"TYING CLAUSES" IN LEASES.—In a government suit to dissolve an alleged combination of manufacturers of shoe machinery in restraint of trade, the

bill charged a general scheme of monopoly, evidenced and carried out by (1) uniting in one corporation the business of several competing manufacturers; (2) subsequent acquisitions of competing businesses, patent rights, etc.; (3) a system of leasing shoe machinery with "tying clauses" in the leases, whereby the monopoly was extended and perpetuated. The District Court found on the facts that there was no substantial competition between the machines manufactured by the constituent companies before the combination; that neither the purpose nor the effect of the subsequent acquisitions was in any substantial degree to suppress competition; that the so-called "tying clause" in the leases were reasonable agreements made for legitimate business reasons, and not for the purpose or with the effect charged in the bill; that the general monopolistic intent alleged had not been proved; and that the defendant company's very large share of the total business in shoe machinery had been secured through its lawful patent monopoly of the best machines, combined with unusual business efficiency. From a decree for the defendants the United States appealed to the Supreme Court. *Held,* that in a case involving conflicting testimony on all the issues, most of which was heard in open court, great deference should be given to the findings of the trial judges; that these findings were justified by the evidence and should be affirmed; and that the facts proved did not show any violation of the Sherman Act. Day, Pitney and Clarke, JJ., *dissenting.* (McReynolds and Brandeis, JJ., took no part in the decision) *United States v. United Shoe Machinery Co.* (1918, U. S.) 38 Sup. Ct. 472.

See COMMENTS, p. 1060.

MORTGAGES—RIGHTS AND POWERS OF SUCCESSIVE MORTGAGEES—ASSIGNMENT OF RENTS AND PROFITS.—The holder of a fourth mortgage brought suit to foreclose and obtained a receiver to collect the rents in accordance with a provision in the mortgage deed. The owner of a prior mortgage, who was made a party, claimed the rents collected by the receiver by virtue of a provision in his mortgage deed giving him a right to enter and receive the rents and concluding "and said rents and profits are, in the event of any default, hereby assigned to the mortgagee. *Held,* reversing the decision of the Appellate Division, that the rents so collected belonged to the holder of the fourth mortgage. *Sullivan v. Rosson* (1918, N. Y.) 119 N. E. 405.

Even in the absence of any provision in the deed it is not unusual for equity to appoint a receiver of the rents and profits in case the security is inadequate. In such case, however, the mortgagee has no right to rents accrued prior to the receivership decree. A junior mortgagee who takes possession in person or by a receiver is entitled to the rents collected prior to a similar taking of possession by the senior mortgagee. *Ranney v. Peyser* (1880) 83 N. Y. 1; *Madison Trust Co. v. Axt* (1911) 146 App. Div. 121, 130 N. Y. Supp. 371. This is true even though the rents are expressly pledged as security to the senior mortgagee. *Freedman's Sav., Etc., Co. v. Shepherd* (1887) 127 U. S. 494, 502; 8 Sup. Ct. 1250. The reason for this is that such a provision is not an assignment; it gives to the mortgagee no right but only a *power* to create a right to the rents by the act of entry or by having a receiver appointed. Before the exercise of this power the *right* to the rents is still in the mortgagor, and the latter has both the power and the privilege of dealing with them as he pleases, as by reducing the amount of the rental, or assigning his right to a third party. *Frank v. N. Y. L. E. & W. R. R. Co.* (1890) 122 N. Y. 197, 221; 25 N. E. 332. One who claims the rent by virtue of an assignment from the mortgagor should therefore be preferred over another who has previously been given a mere power that he has not yet